

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97214; File No. SR-NYSEAMER-2023-23)

March 28, 2023

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change to Amend Rule 7.25E

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on March 22, 2023, NYSE American LLC (“NYSE American” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.25E, which governs the allocation of securities to Designated Market Makers. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 7.25E, which governs the allocation of securities to Designated Market Makers (“DMMs”). Specifically, the Exchange proposes to require issuers to select all DMM units to interview. The Exchange also proposes to correct a typographical error.

Background and Proposed Rule Change

Rule 7.25E currently provides two options for the allocation of securities to DMMs: (1) the issuer selects the DMM unit; or (2) the issuer delegates selection of the DMM unit to the Exchange.

If the issuer proceeds under the first option, Rule 7.25E(b)(1)(A) provides that the listing company will select a minimum of four DMMs to interview from the pool of DMMs eligible to participate in the allocation process.⁴ The Exchange proposes amending Rule 7.25E(b)(1)(A) to require that issuers select all DMM units to interview. To effectuate this change, the Exchange would delete “a minimum of four” and add “all” after “select” and before “DMM units to interview.”

The proposed change would conform Rule 7.25E(b)(1)(A) with Rule 103B(III)(A)(1) of the Exchange’s affiliate New York Stock Exchange LLC (“NYSE”), which does not specify a minimum number of DMMs to be interviewed. The Exchange believes that not specifying a

⁴ See Rule 7.25E(b)(1)(A). As of the date of this filing, there are currently three active DMMs on the Exchange.

number of DMMs to be interviewed would ensure that all eligible DMM units would have an opportunity to participate in the allocation process at all times irrespective of the number of DMMs operating on the Exchange.

In addition, the Exchange proposes a non-substantive change to Rule 7.25E(b)(1)(A) to replace “shall” with “must” before “select.” Finally, the Exchange also proposes to correct the heading in Rule 7.25E(b)(1), which should read “Issuer Selection.” These proposed changes would further align the Exchange’s Rule with NYSE Rule 103B.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Section 6(b)(5),⁶ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

Specifically, the Exchange believes that the proposed amendments to Rule 7.25E(b)(1)(A) to provide that issuers interview all DMMs would promote just and equitable principles of trade because no eligible DMM unit would be excluded from the issuer interview. For the same reason, the Exchange believes the proposal is designed to remove impediments to, and perfect the mechanism of a free and open market and a national market system. The Exchange believes that requiring all DMM units to participate in issuer interviews would also continue to foster competition and optimal performance among DMMs. In addition, the

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

Exchange believes that harmonizing the Exchange's rule with that of its NYSE affiliate would provide greater harmonization among affiliated exchanges that have adopted substantially similar requirements for DMM interviews, thereby resulting in similarly efficient administration of listing interviews across exchanges.

Finally, the Exchange's proposed technical, non-substantive changes – correcting a typographical error and replacing “will” with “must” – adds clarity and transparency to the Exchange's Rules and reduces potential investor confusion, which would remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed changes would continue to foster competition and optimal performance among DMMs, thereby enhancing the quality of the services DMMs provide to issuers. Further, the Exchange believes that the proposed changes would not be burdensome to issuers since issuers are currently interviewing all DMMs. Even assuming an increase in the burden on issuers during the allocation process if the number of DMMs on the Exchange should increase, the Exchange believes that any such increased burden would be small relative to the benefits that additional competition among DMM units may provide. Issuers could, moreover, permit the Exchange to select the DMM unit pursuant to the process found in Rule 7.25E(b)(2).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of

the Act⁷ and Rule 19b-4(f)(6) thereunder.⁸ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)⁹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁰ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹¹ of the Act to determine whether the proposed rule change should be approved or disapproved.

⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

⁸ 17 CFR 240.19b-4(f)(6).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 17 CFR 240.19b-4(f)(6)(iii).

¹¹ 15 U.S.C. 78s(b)(2)(B).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEAMER-2023-23 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEAMER-2023-23. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without

change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEAMER-2023-23 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Sherry R. Haywood,
Assistant Secretary.

¹² 17 CFR 200.30–3(a)(12).